

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

3:12cv526  
[3:02cr3]

DAMIEN LAMOND OWENS,	)	<u>SIMMONS SCREENING ORDER</u>
	)	
Petitioner,	)	
Vs.	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	

**THIS MATTER** is before the court on petitioner's counseled motion for relief under Simmons.

The court has considered the pending motion and determined that, to the extent petitioner seeks relief under 28, United States Code, Section 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, an initial screening of the petition under the Rules Governing § 2255 Proceedings, Rule 4(b) 28 U.S.C. §2255 is appropriate.

The court finds that the petition has been signed under penalty of perjury, Rule 2(b)(5), 28 U.S.C. § 2255,<sup>1</sup> or has been signed by counsel.

The court finds that petitioner has asserted that jurisdiction exists under § 2255(f), which may require further review.

Finally, in determining whether petitioner has asserted a colorable claim for relief under § 2255(a), the court has conducted an initial screening, which reveals that petitioner has made a 21 U.S.C. § 841(b) sentencing enhancement claim under Simmons, in which it is contended that petitioner received a sentencing enhancement based on a now non-

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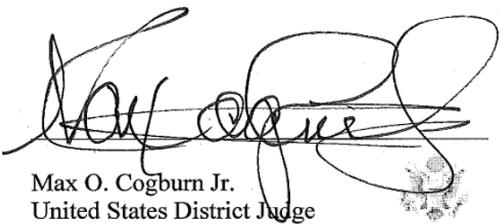
<sup>1</sup> To the extent petitioner has sought relief in the motion under provisions other than § 2255, those claims made in the alternative are denied without prejudice as to refiling as separate motions in the criminal case, *nunc pro tunc*.

qualifying North Carolina offense; specifically, that petitioner received an enhanced minimum sentence under 21 U.S.C. § 841(b)(1)(A).

**ORDER**

**IT IS, THEREFORE, ORDERED** that as to petitioner's claim of receiving an enhanced minimum sentence under 21 U.S.C. § 841(b)(1)(A), the claim is summarily **DENIED** under United States v. Powell, \_\_\_ F.3d \_\_\_, No. 11-6152 (4th Cir. Aug. 20, 2012) as a § 841(b)(1)(A) sentence is a lawful sentence within the unenhanced statutory maximum.

Signed: August 30, 2012



Max O. Cogburn Jr.  
United States District Judge